

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

**PATRICK HALTIWANGER,
ADC #90474**

PLAINTIFF

v.

2:05CV00188WRW

LETONIO WILLIAMS, et al.

DEFENDANTS

ORDER

Pending are Plaintiff's, an inmate proceeding *pro se*, Motion for Reconsideration (Doc. No. 44) and Motion for Leave to Appeal *In Forma Pauperis* (Doc. No. 45).

Plaintiff's Motion for Reconsideration merely restates the arguments made in his objections to the recommended disposition. Therefore, the Motion for Reconsideration (Doc. No. 44) is DENIED.

Plaintiff has filed a notice of appeal with the Eighth Circuit Court of Appeals, and has requested leave to proceed *in forma pauperis* under 28 U.S.C. § 1915.¹ Defendants have filed an objection to Plaintiff's motion,² based on Plaintiff's status as a "three-striker" within the meaning of the Prison Litigation Reform Act (PLRA).³

Although Plaintiff has submitted a declaration that makes the showing required by § 1915(a), his request to proceed *in forma pauperis* is DENIED. According to the PLRA, "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on three (3) or more prior occasions, while incarcerated or detained

¹Doc. No. 45.

²Doc. No. 48.

³28 U.S.C. § 1915(g).

in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.”⁴

The record reflects that Plaintiff has had three prior complaints dismissed as frivolous or for failure to state a claim upon which relief may be granted.⁵

Therefore, Plaintiff's request to proceed *in forma pauperis* on appeal (Doc. No. 45) is DENIED. Accordingly, within thirty (30) days from the date of this Order Plaintiff must either pay to this Court the full \$255.00 filing and docketing fees for filing an appeal, or file with the United States Court of Appeals for the Eighth Circuit an application to proceed *in forma pauperis* on appeal.⁶

Plaintiff must file any future documents or pleadings in connection with his appeal directly with the Eighth Circuit Court of Appeals.

IT IS SO ORDERED this 29th day of November, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

⁴*Id.*

⁵ See 5:95cv324, 5:00cv158, 5:00cv229. See also *Haltiwanger v. Mobley*, No. 05-1272 (8th Cir. April 19, 2005) and *Haltiwanger v. Norris*, No. 05-1415 (8th Cir. November 8, 2005), where the 8th Circuit revoked plaintiff's *in forma pauperis* status on appeal due to three strikes. The Court also notes that plaintiff's complaint in this action was dismissed on October 31, 2005, and that such dismissal counts as a strike under the PLRA (Doc. No. 42).

⁶ If Plaintiff chooses to pay the filing fee, he is instructed to make his remittance payable to “Clerk, United States District Court.” and to include upon it: (1) his name, (2) his prison identification number, (3) the case number, and (4) that the remittance is for the appeal of the instant action.